

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JAMES GUNNELLS,

Plaintiff,

vs.

Case No. 08-CV-584-FHM

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

OPINION AND ORDER

Plaintiff seeks an award of attorney fees in the amount of \$1,973.50 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. [Dkt. 23]. Plaintiff states that “any fees payable should be made directly to Attorney pursuant to Plaintiff’s assignment.” [Dkt. 23, p. 4]. The Commissioner agrees that Plaintiff should be awarded fees in the requested amount, but asserts that the award should be made to Plaintiff, rather than his attorney. [Dkt. 24].

The EAJA statute provides for payment of fees to the prevailing party, here Plaintiff, as follows:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412 (d)(1)(A) [emphasis supplied]. The Tenth Circuit has ruled that the term “prevailing party” refers to Plaintiff, not the attorney. *Manning v. Astrue*, 510 F.3d 1246 1255(10th Cir. 2007).

The undersigned finds that the amount of the fee request is reasonable. Based on that finding and the absence of any objection to the amount of the fee request, the undersigned finds that Plaintiff should be awarded EAJA fees in the amount of \$1,973.50. Pursuant to the Commissioner’s usual practice, the check should be made payable to Plaintiff and mailed to counsel’s address. If Plaintiff’s attorney receives the fees awarded herein and attorney fees are also awarded and received by counsel under 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

Plaintiff’s Motion for Attorney’s Fees and Expenses Under the Equal Access to Justice Act [Dkt. 23] is GRANTED as provided herein.

SO ORDERED this 19th day of August, 2009.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE